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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202978.2

DATE: June 15, 1981

MATTER OF: Beelner & Thomas - Reconsideration

DIGEST:

Prior decision finding protest untimely is affirmed upon reconsideration where protester presents no new facts or evidence to alter prior holding and issue raised in protest has been decided in past by GAO and therefore is not "significant" to procurement practices under 4 C.F.R. § 20.2(c) (1980).

Beelner & Thomas (B&T) has requested reconsideration of our decision in the matter of Beelner & Thomas, B-202978, May 4, 1981, in which we found B&T's protest to be untimely filed under our Bid Protest Procedures (4 C.F.R. part 20 (1980)).

B&T objected to a solicitation being issued on a brand name or equal basis and filed a protest with the Deputy Commissioner of the Federal Supply Service (FSS) on March 24, 1981. The closing date for receipt of initial proposals was March 30, 1981. On April 15, 1981, B&T received a letter from the Acting Director of the National Furniture Center, FSS, the procuring activity, advising that B&T's protest letter was not received at the Center until after the closing date and that the procurement was proceeding. B&T protested to our Office on April 20, 1981.

In our prior decision we held, assuming the protest at the agency level was timely filed prior to the closing date, the subsequent protest here was untimely filed under our Bid Protest Procedures. Section 20.2(a) of the Procedures requires protests be filed with our Office within 10 working days of

[Request for Reconsideration]

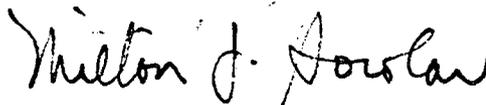
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actual or constructive knowledge of the initial adverse agency action following a protest to the contracting agency. We noted that the receipt of proposals or opening of bids on the scheduled date, without taking the corrective action the protester urges, constituted initial adverse agency action. Baxter & Sons Elevator Co., Inc., 60 Comp. Gen. (B-197595, December 3, 1980), 80-2 CPD 414. Since B&T's protest was filed more than 10 working days after March 30, 1981, it was untimely and not for consideration.

On reconsideration, B&T argues that its initial notice of adverse agency action was the April 15 letter advising that the protest had not been received until after the closing date. While we agree this was notice of an action adverse to the interest of B&T, it was not the initial adverse action, which was the receipt of proposals without an amendment to the specifications. Therefore, we find B&T has introduced no new facts or evidence to alter our prior decision.

Finally, B&T states that the issue involved in the protest (brand name or equal specifications as restrictive) is significant to procurement practices so as to merit consideration notwithstanding its untimeliness. See 4 C.F.R. § 20.2(c) (1980). The significant issue exception to the timeliness rules is applied sparingly so that the timeliness rules do not become meaningless. Where the issue involved in a protest has been the subject of past decisions of our Office, which is the case here, such issues are not "significant" within the meaning of the Procedures. 49 Comp. Gen. 195 (1969) and 51 Comp. Gen. 247 (1971).

The request for reconsideration is denied.



Acting Comptroller General
of the United States